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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 MARK E. LEWIS,) Civil No. 09CV2444 L (WVG)
12 Plaintiff,)
13 v.) **ORDER GRANTING WITH**
14 BANK OF AMERICA, N.A. and its) **PREJUDICE DEFENDANT'S**
15 successors and/or assigns,) **MOTION TO DISMISS FIRST**
16 Defendants.) **AMENDED COMPLAINT [doc. #15]**

17 Defendant Bank of America ("BofA") removed this case from the Superior Court for the
18 County of San Diego. Thereafter, the parties agreed for the filing of an amended complaint
19 ("FAC"). BofA now moves to dismiss the FAC. The motion has been fully briefed and is
20 considered without oral argument under Civil Local Rule 7.1(d)(1).

21 **Discussion**

22 The Court first notes that the FAC contained six claims but plaintiff has consented to
23 dismissal of the first, second, fourth, fifth and sixth claims. (Opp. at 4.) The sole remaining
24 claim is for violation of the Truth in Lending Act ("TILA"). In his FAC, plaintiff states that he
25 is "informed and believes that the Defendant failed to provide the Plaintiff with the Federal
26 Truth in Lending Act requirement of TWO Notice of Right to Cancel forms with the transaction
27 date recession [sic] date correctly filled in." (FAC at ¶17.) Defendant contends the TILA claim
28 is barred by the applicable statute of limitations. Plaintiff relies on equitable tolling to maintain

1 his TILA claim.

2 **1. TILA Statute of Limitations**

3 A lender's violation of TILA allows the borrower to seek damages or to rescind a
4 consumer loan secured by the borrower's primary dwelling. A plaintiff's cause of action for
5 damages under TILA is subject to a one-year statute of limitations, 15 U.S.C. § 1640(e), which
6 runs from the time the loan transaction is consummated. *King v. State of California*, 784 F.2d
7 910, 915 (1986).

8 It is undisputed that the BofA home loan at issue was consummated on August 10, 2007;
9 therefore, the deadline for a damage action on the home loan was August 10, 2008. The present
10 case was filed on September 25, 2009 in the Superior Court for the State of California, County
11 of San Diego, which makes the TILA claim for damages time barred.

12 But the Ninth Circuit has held equitable tolling of civil damages claims brought under
13 TILA may be appropriate "in certain circumstances" such as when a borrower might not have
14 had a reasonable opportunity to discover the nondisclosures within the one-year period. *King v.*
15 *State of California*, 784 F.2d 910, 915 (9th Cir. 1986); *Nava v. VirtualBank*, 2008 WL 2873406
16 at *3 (E.D. Cal. 2008). It is clear that a plaintiff is not automatically entitled to equitable tolling
17 whenever a creditor fails to provide required disclosures.

18 In the present case, plaintiff has not offered any facts demonstrating entitlement to
19 equitable tolling. As stated in his opposition,

20 quite simply put plaintiff did not become aware of the TILA violations until two
21 factors occurred, one the plaintiff received the 'forensic audit' of the loan, and two
the plaintiff was rejected by the lender for his loan modification request.

22 (Opp. at 4.)

23 This allegation is insufficient for the application of equitable tolling. Plaintiff has not set
24 forth any facts that would support a finding of delayed discovery or the lack of a reasonable
25 opportunity to discover the nondisclosures that form the basis of the TILA action. *King*, 784
26 F.2d at 915.

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1 **2. Conclusion**

2 Plaintiff's TILA claim is time barred and no factual basis has been alleged that would
3 support equitable tolling. Having had an opportunity to amend the complaint to make factual
4 allegations concerning equitable tolling and having not doing so, **IT IS ORDERED** defendant's
5 motion to dismiss the first amended complaint with prejudice is **GRANTED**. The Clerk of the
6 Court is directed to close this case.

7 **IT IS SO ORDERED.**

8 DATED: April 5, 2010

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10 
M. James Lorenz
United States District Court Judge

11 COPY TO:

12 HON. WILLIAM V. GALLO
13 UNITED STATES MAGISTRATE JUDGE

14 ALL PARTIES/COUNSEL
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